

INVESTMENT GUARANTIES

Agreement Between the
UNITED STATES OF AMERICA
and the **PHILIPPINES**

Signed at Manila October 22, 1998



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PHILIPPINES

Investment Guaranties

*Agreement signed at Manila October 22, 1998;
Entered into force February 15, 2000.*

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
RELATING TO INVESTMENTS SUPPORTED BY
THE OVERSEAS PRIVATE INVESTMENT CORPORATION**

DESIRING to enhance their accord regarding investments made by nationals of the United States in the Philippines in activities approved by the Philippine Government covered by investment guaranties provided by the U.S. Government as evidenced by their Exchange of Notes dated February 18 and 19, 1952 as amended by an Exchange of Notes which entered into force on August 15, 1966, and subsequently implemented by an Agreement dated July 29, 1988 on the Administrative Procedures for OPIC coverage;

REALIZING that the Overseas Private Investment Corporation (OPIC) is an agency of the United States of America that makes loans and provides investment guarantees to U.S. and foreign enterprises investing abroad which involve U.S. nationals and provides U.S. nationals investing abroad with – insurance against such risks as currency transfer restrictions, expropriation without compensation and losses resulting from political violence;

RECOGNIZING that the procedures provided in the 1952 Agreement, as amended, have to be made current in view of the passage of new investment-related laws, including, though not exclusively, Republic Act No. 7042, otherwise known as the Philippine Foreign Investments Act of 1991, as amended; and

ACKNOWLEDGING that making loans and providing investment guarantees to enterprises doing business in the Republic of the Philippines in which U.S. nationals have interests, and receiving payment of interest, principal and fees on account of such loans and guarantees, and providing insurance against such risks as currency transfer restrictions, expropriation without compensation and losses resulting from political violence do not constitute "doing business" in the Philippines as defined in Rep. Act No. 7042, i.e., the Foreign Investments Act of 1991, as amended, the Corporation Code of the Philippines, or any other law, rule or regulation of the Philippines,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

As used in this Agreement, the following terms have the meanings herein provided. The term "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance or reinsurance which is supported or provided by the Issuer in connection with a project in the territory of the Philippines. The term "Issuer" refers to OPIC and any successor agency of the United States of America, and any agent of either. The term "Taxes" means all present and future taxes, levies, excises, imposts, stamps, duties and charges imposed in the territory of the Philippines and all liabilities with respect thereto, in relation to Article 2(b), Article 2(c) and Article 3 hereof.

ARTICLE 2

- (a) For Investment Support and activities as defined in this Agreement made by the Issuer, the latter shall not be subject to regulation under the laws of the Philippines applicable to insurance or financial organizations.
- (b) All operations and activities undertaken by the Issuer as defined in this Agreement in connection with any Investment Support and all payments, whether of interest, principal, fees, dividends, premiums or the proceeds from the liquidation of assets or of any other nature, that are made, received or guaranteed by the Issuer in connection with any Investment Support shall be exempt from Taxes. The Issuer shall not be subject to any Taxes in connection with any transfer, succession, or other acquisition, which occurs pursuant to paragraph (c) of this Article or Article 3(a) hereof. Any project in connection with which Investment Support has been provided shall be accorded treatment no less favorable than that accorded to projects benefiting from the investment guarantee program of any other national or multilateral development institution which operates in the Philippines.
- (c) If the Issuer makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, the Government of the Philippines shall recognize the transfer to, or acquisition by, the Issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the Issuer to any right, title, claim, privilege or cause of action existing, or which may arise, in connection therewith.
- (d) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, provided that nothing in this Agreement shall limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have as the Issuer pursuant to paragraph (c) of this Article.

- (e) The Philippine Government shall not be liable for any obligations of the Issuer by virtue of this Agreement.
- (f) The Issuer shall inform in writing the Philippine Government through its Board of Investments (BOI) of the Investment Support granted by it under this Agreement.
- (g) Investment Support provided by the Issuer does not constitute "doing business" in the Philippines as defined in Rep. Act No. 7042, i.e., the Foreign Investments Act of 1991, as amended, the Corporation Code of the Philippines, or any other law, rule or regulation of the Philippines.

ARTICLE 3

- (a) Amounts in the currency of the Philippines, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support provided by the Issuer for a project in the Philippines, shall be accorded treatment in the territory of the Philippines no less favorable as to use and conversion than the treatment to which such funds would have been entitled in the hands of the person or entity from which the Issuer acquired such amounts.
- (b) Such currency and credits may be transferred by the Issuer to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of the Philippines in accordance with its laws.

ARTICLE 4

- (a) Any dispute between the Government of the United States of America and the Government of the Republic of the Philippines regarding the interpretation of this Agreement or which, in the opinion of either party hereto, presents a question of international law arising out of any project or activity for which Investment Support has been provided shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute, including the question of whether such dispute presents a question of international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with paragraph (b) of this Article.

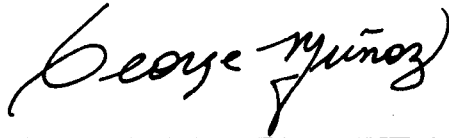
- (b) The arbitral tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:
- (i) Each Government shall appoint one arbitrator. These two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months and the president within six months, of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-general of the International Centre for the Settlement of Investment Disputes to make the necessary appointment or appointments.
 - (ii) Decision of the arbitral tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decision shall be final and binding.
 - (iii) During the proceedings, each Government shall bear the expense of its arbitrator and of its representation in the proceedings before the tribunal, whereas the expenses of the president and other costs of the arbitration shall be paid in equal parts by the two Governments. In its award, the arbitral tribunal may reallocate expenses and costs between the two Governments.
 - (iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

ARTICLE 5

- (a) This Agreement shall enter into force on the date on which the Government of the Republic of the Philippines notifies the Government of the United States of America that all legal requirements for entry into force of this Agreement have been fulfilled. Upon so entering into force, the provisions of the Agreement between the two Governments effected by the Exchange of Notes dated February 18 and 19, 1952, as amended by an Exchange of Notes which entered into force on August 15, 1966 as amended by an Agreement dated July 29, 1988 on the Administrative Procedures for OPIC Coverage which are inconsistent with the provisions of this Agreement are hereby superseded, amended or modified accordingly.
- (b) This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent to terminate this Agreement. In such event, the provisions of this Agreement shall, with respect to Investment Support provided while this Agreement was in force, remain in force so long as such Investment Support remains outstanding, but in no case longer than twenty years after the termination of this Agreement.

IN WITNESS WHEREOF , the undersigned duly authorized by
their respective **GOVERNMENTS**, have signed this Agreement.

DONE at , Philippines, on October 22, 1998, in
duplicate in the English language.



**FOR THE GOVERNMENT OF
THE UNITED STATES OF
AMERICA**



**FOR THE GOVERNMENT OF
THE REPUBLIC OF THE
PHILIPPINES**